

**AFFIDAVIT OF SPECIAL AGENT ANDREW KIRK IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Andrew Kirk, state:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”) and have been since July of 2019. I am currently assigned to a national security squad that focuses on counterintelligence and foreign influence operations. In my work with the FBI, I have received training and experience in interviewing and interrogation techniques; arrest procedures; search and seizure; money laundering investigations, including the illegal structuring of financial transactions; surveillance techniques; asset forfeiture; how criminals engage in financial transactions to promote, disguise or conceal illegal activities and the source of the proceeds derived from it; how criminals unlawfully engage in monetary transactions involving the proceeds of specified unlawful activity (practices commonly referred to collectively as “money laundering”); counterintelligence operations and espionage-related activities conducted by foreign countries in the United States; and conspiracies associated with criminal offenses.

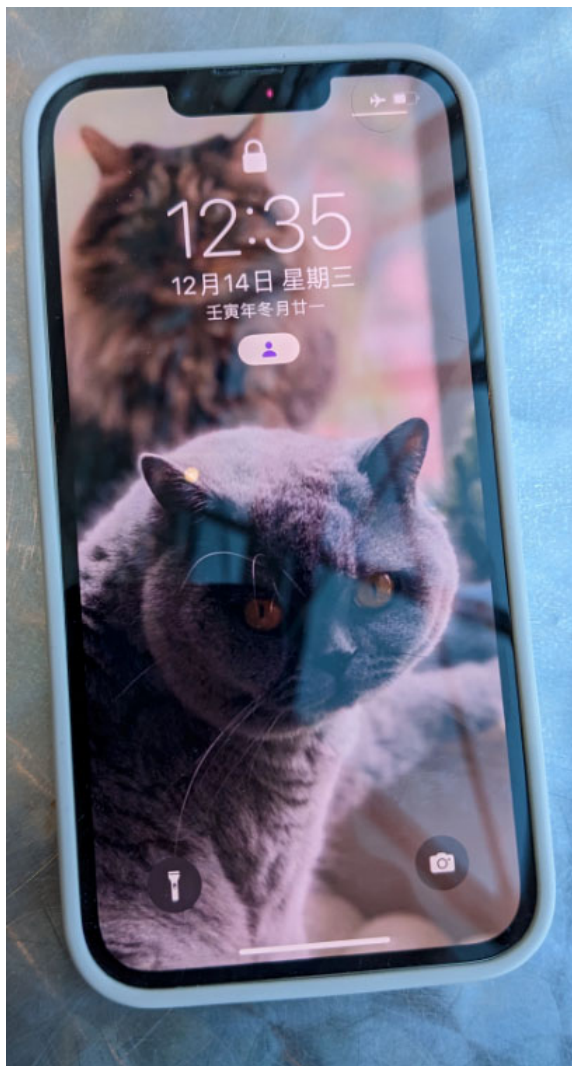
2. Prior to my employment with the FBI, I was a Special Agent with the Air Force Office of Special Investigations from 2013. In that capacity, I conducted a variety of investigations regarding violent crimes, sexual assault, drug distribution, and from June 2016 on I specifically handled counterintelligence matters.

3. As a Special Agent, I am authorized to investigate violations of United States laws and to execute warrants issued under the authority of the United States.

4. I am currently investigating Xiaolei WU for making a series threatening and

harassing communications towards and about an individual who posted a flier supporting democracy and freedom in China, in violation of 18 U.S.C. § 2261A (Stalking).

5. This affidavit is being submitted in support of an application for a warrant to search electronic equipment, specifically an iPhone 13 belonging to Xiaolei Wu (“the equipment”) that is in the possession of law enforcement investigators, as described in Attachment A. A photograph of that iPhone 13 is below:



6. There is probable cause to believe that the equipment contains evidence, fruits, and instrumentalities of the crimes listed above, as described in Attachment B.

7. The facts in this affidavit come from my personal observations and review of records, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is probable cause for the requested search warrant and does not set forth all of my knowledge about this matter.

PROBABLE CAUSE TO BELIEVE THAT A FEDERAL CRIME WAS COMMITTED

7. On or about December 9, 2022, I submitted an affidavit in support of a criminal complaint.¹ That affidavit, which is attached hereto as Exhibit A and incorporated by reference, provides probable cause for WU's violations of 18 U.S.C. § 2261A.

PROBABLE CAUSE TO BELIEVE THAT THE EQUIPMENT CONTAINS EVIDENCE, FRUITS, AND INSTRUMENTALITIES

21. I also have probable cause to believe that the equipment contains fruits, evidence, and instrumentalities of violations of the federal statutes listed above, as described in Attachment B. The equipment is currently in the possession of an FBI agent after being seized from WU incident to his arrest on December 14, 2022.

22. First, I know that the equipment belongs to WU, because it was seized from him incident to his arrest; because WU told me that it was his equipment; and because WU provided me with the password for the equipment, which worked to unlock the equipment.

23. Second, with WU's permission, I performed a manual review of the equipment. During that manual review, I saw communications made by WU with another individual relating to the conduct described above.

24. As described above, the equipment is currently in the possession of an FBI agent.

¹ In that affidavit, I referred to an individual as "Individual 1." Individual 1 is Zhiyi Zhou, a/k/a Zoey Zhou.

From my training and experience and the training and experience of law enforcement personnel who routinely handle this equipment, I understand that it has been stored in a manner in which its contents are, to the extent material to this investigation, in substantially the same state as they were when it first came into the investigators' possession.

25. From my training, experience, and information provided to me by other agents, I am aware that individuals frequently use computer equipment to carry out, communicate about, and store records regarding their daily activities. These tasks are frequently accomplished through sending and receiving e-mail, instant messages, and other forms of phone or internet based messages; scheduling activities; keeping a calendar of activities; arranging travel; purchasing items; searching for information including information regarding travel and activities; arranging for travel, accessing personal accounts including banking information; paying for items; and creating and storing images and videos of their movements and activities.

26. Based on my training, experience, and information provided by other law enforcement officers, I know that many smartphones (which are included in Attachment B's definition of "hardware") can now function essentially as small computers. iPhones, such as WU's phone, are a type of smartphone. Smartphones have capabilities that include serving as a wireless telephone, digital camera, portable media player, GPS navigation device, sending and receiving text messages and e-mails, and storing a vast range and amount of electronic data. Examining data stored on devices of this type can uncover, among other things, evidence that reveals or suggests who possessed or used the device.

27. From my training, experience, and information provided to me by other agents, I am aware that individuals commonly store records of the type described in Attachment B in

mobile phones, computer hardware, computer software, and storage media.

28. Based on my knowledge, training, experience, and information provided to me by other agents, I know that computer files or remnants of such files can be recovered months or years after they have been written, downloaded, saved, deleted, or viewed locally or over the Internet. This is true because:

- a. Electronic files that have been downloaded to a storage medium can be stored for years at little or no cost. Furthermore, when users replace their computers, they can easily transfer the data from their old computer to their new computer.
- b. Even after files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data, which might not occur for long periods of time. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.
- c. Wholly apart from user-generated files, computer storage media—in particular, computers' internal hard drives—contain electronic evidence of how the computer has been used, what it has been used for, and who has used it. This evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory "swap" or paging files. It is technically possible to delete this information, but computer users typically do not erase or delete this evidence

because special software is typically required for that task.

d. Similarly, files that have been viewed over the Internet are sometimes automatically downloaded into a temporary Internet directory or "cache." The browser often maintains a fixed amount of hard drive space devoted to these files, and the files are overwritten only as they are replaced with more recently viewed Internet pages or if a user takes steps to delete them.

CONCLUSION

34. Based on the information described above, I have probable cause to believe that WU has violated 18 U.S.C. §§ 2261A.

35. Based on the information described above, I also have probable cause to believe that evidence, fruits, and instrumentalities of these crimes, as described in Attachment B, are contained within the equipment described in Attachment A.

Sworn to under the pains and penalties of perjury,

/s/ Andrew Kirk

Andrew Kirk
Special Agent, FBI

Subscribed and sworn to before me on December 14, 2022

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United States Chief Magistrate Judge

